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R.P., Appellant)	
)	
and)	Docket No. 20-0891
)	Issued: September 20, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Los Angeles, CA, Employer)	
)	

Martin Kaplan, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 17, 2020 appellant, through counsel, filed a timely appeal from a December 31, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that the acceptance of her claim should be expanded to include additional conditions causally related to her accepted March 27,

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

2012 employment injury; and (2) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 14, 2019, as she no longer had residuals or disability causally related to her accepted March 27, 2012 employment injury.

FACTUAL HISTORY

On April 23, 2012 appellant, then a 36-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on March 27, 2012, she injured her right shoulder when demonstrating the stance required for screening while in the performance of duty. On May 11, 2012 OWCP accepted the claim for right shoulder sprain. Appellant stopped work on June 22, 2012 and returned to full-time modified work on August 31, 2012, but stopped work again on September 19, 2012. On December 3, 2012 she underwent OWCP-authorized right shoulder arthroscopy with rotator cuff debridement, subacromial decompression, bursectomy, and acromioplasty. OWCP subsequently expanded its acceptance of the claim to include partial tear of the right rotator cuff. Appellant returned to full-time, modified-duty work on January 28, 2013. As of August 5, 2013, the employing establishment could no longer accommodate appellant's restrictions. OWCP paid appellant wage-loss compensation on the periodic compensation rolls commencing September 21, 2013.³

In January 2, 2017 progress notes, Dr. Jonathan Levy, a Board-certified orthopedic surgeon, indicated that appellant's right shoulder remained painful and that she had decided not to undergo additional surgery. He related physical examination finding regarding appellant's right shoulder, indicating that appellant had painful arc of motion, positive Neer impingement and Hawkins impingement, with no crepitus. Dr. Levy diagnosed right impingement with CRPS. He indicated that there was no change in appellant's restrictions, but also noted an additional restriction of no repetitive movement.

In a January 4, 2017 note, Dr. Schiuma reported on appellant's progress following a spinal cord stimulator implant for CRPS of the right upper extremity. Appellant complained of severe pain in her right shoulder with inability to use right arm. Physical examination revealed significant crepitation on any motion of her shoulder, limited motion and pain on range of motion. Dr. Schiuma noted that appellant had a history of reflex sympathetic dystrophy and that any

³ In a letter dated June 11, 2014, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on the April 24, 2014 report of Dr. Richard D. Goldstein, a Board-certified orthopedic surgeon serving as an impartial medical examiner. By decision dated August 15, 2014, it terminated appellant's wage-loss compensation and medical benefits, effective August 24, 2014. OWCP accorded the special weight of the medical opinion evidence to Dr. Goldstein's April 24, 2014 report. On September 8, 2014 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on March 11, 2015. By decision dated May 26, 2015, OWCP's hearing representative affirmed the August 15, 2014 termination decision, but directed OWCP to undertake additional medical development based on new medical evidence received. The hearing representative found that OWCP was to obtain a supplemental report from Dr. Goldstein to further address the additional medical evidence of record. As Dr. Goldstein was unavailable to render a supplemental report, OWCP referred appellant to Dr. Andrew Ellowitz, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the outstanding conflict in medical opinion. In reports dated September 9 and 17, 2015, Dr. Ellowitz noted that appellant was being treated for complex regional pain syndrome (CRPS). He opined that he was unsure as to whether appellant had CRPS, as her reported findings were more indicative of a mechanical shoulder issue and he recommended additional shoulder arthroscopy to more correctly identify the shoulder issue. Dr. Ellowitz also provided employment-related restrictions. Based on his reports, OWCP reinstated appellant's wage-loss compensation benefits.

increased activity seemed to aggravate her problem. He indicated that appellant's condition was unchanged and that she was experiencing sensitivity from the dorsal column stimulator.

On April 20, 2017 OWCP referred appellant to Dr. Jon D. Donshik, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a May 9, 2017 report, Dr. Donshik opined that appellant continued to suffer residuals of her employment-related conditions. He noted that she had not undergone repeat right shoulder arthroscopy, which he opined was her best chance to have some sort of recovery. Dr. Donshik opined that appellant could perform full-time sedentary work. He also noted that she might be a candidate for vocational rehabilitation.⁴

On September 1, 2018 OWCP referred appellant, a July 31, 2018 statement of accepted facts (SOAF), a list of questions, and the medical record, to Dr. Clinton G. Bush, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an August 15, 2018 report, Dr. Bush noted appellant's history of the injury, his review of the July 31, 2018 SOAF and his review of appellant's medical record. He noted that the first medical report he received was dated November 24, 2014. Dr. Bush opined that appellant's examination findings did not preclude her from her work and did not provide objective evidence of a continuing medical condition. He noted that the only objective pathologic finding was relatively mild crepitus reproducible with active circumduction of appellant's shoulder. Dr. Bush indicated that appellant willingly participated repeatedly in demonstrating this phenomenon and exhibited no pain behaviors despite subsequently stating, when questioned, that her crepitus was painful. He indicated that crepitus was not unusual and was the expected postoperative subacromial bursal scarring from a rotator cuff repair. Dr. Bush discussed appellant's 2014 postoperative magnetic resonance imaging (MRI) scan and indicated that there was insufficient evidence to explain appellant's chronic complaints of disabling shoulder pain. He also noted that she had complaints of diffuse neurological symptoms in the right upper extremity including pain and loss of sensation, but that he was unable to identify any objective evidence of neuropathy to explain her symptoms. Dr. Bush indicated that there was no evidence of loss of motor strength or any sign of muscle atrophy in the right upper extremity and that the described distribution of sensory loss was nonanatomic. He concluded that appellant had subjective complaints with no apparent objective basis to support the pain complaints. Furthermore, appellant exhibited normal function in the right upper extremity except in elevation above 90 degrees. However, when actively assisted, she had elevation up to 140 degrees and could hold that position without assistance. Thus, Dr. Bush opined that appellant's work-related shoulder strain had resolved as there was no objective evidence of any residual effect. He further opined that appellant was able to return to her regular duties without restrictions.

On October 18, 2018 OWCP requested a supplemental opinion from Dr. Bush as to whether the accepted right shoulder partial rotator cuff tear had resolved. In a November 7, 2018 supplemental report, Dr. Bush advised that there was no medical evidence of a partial thickness rotator cuff tear. He indicated that appellant only had subjective complaints with no apparent objective basis. Dr. Bush opined that appellant had recovered from her right shoulder sprain and partial rotator cuff and that there was no objective evidence of any residuals, based upon the physical examination findings and the medical records he reviewed. He noted that he had not received any additional records.

⁴ On July 14, 2017 OWCP referred appellant to vocational rehabilitation. However, on December 6, 2017, it closed its vocational efforts as Dr. Donshik's new restrictions of August 19, 2017 were too restrictive for a placement effort.

In a notice dated January 30, 2019, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Bush's opinion that she no longer had residuals or disability from work due to the March 27, 2012 employment injury. It afforded her 30 days to challenge the proposed termination action.

In a February 26, 2019 response to the notice of proposed termination of compensation, counsel argued that sufficient medical evidence of record had not been provided to Dr. Bush. Counsel also requested that the acceptance of appellant's claim be expanded to include the additional conditions noted by Dr. Ellowitz of right shoulder pain and crepitation.

OWCP received additional evidence. In July 9, 2018 and January 7, 2019 notes, Dr. Levy noted examination findings and diagnosed right shoulder impingement with CRPS. He also noted appellant's continuing constant pain, and indicated that a recent spinal cord stimulator implant had helped her symptoms.

In an October 31, 2018 report, Dr. Abraham Chamely, a neurologist, opined that appellant's history was in keeping with episodic common migraine, but indicated that the etiology as to why the headaches were triggered a year and a half ago was unclear. He further noted that appellant had a chronic pain syndrome of the right upper extremity. Dr. Chamely noted that this has been classified as a brachial plexus abnormality, with normal reflexes and relatively normal muscle strength, but he opined it was more of a CRPS.

In a January 28, 2019 report, Dr. Jaclyn Galinaitis, a neurologist, provided assessments of migraine headaches, CRPS of the right upper extremity, and tremor.

OWCP thereafter undertook additional development.⁵ In a March 8, 2019 letter, it requested that Dr. Bush provide a supplemental report, which addressed whether appellant had objective medical findings to support remaining residuals and disability stemming from her March 27, 2012 employment injury. OWCP provided Dr. Bush with a copy of Dr. Ellowitz' September 15, 2015 impartial medical evaluation report, diagnostic test results, and pertinent medical documentation during the period 2012 through 2014.

Dr. Bush, in a May 13, 2019 supplemental report, reviewed a total of 55 pages of additional documentation and summarized the evidence. He indicated that none of the descriptions in the additional 55 pages of medical records contained any new information, which contradicted previous records provided him or altered his prior opinions already rendered. Dr. Bush noted that appellant described a history of more than five years of ongoing pain. He indicated that the stated mechanism of injury was a simple maneuver of abducting the shoulder with no associated resistance to approximately 120 degrees with an associated snap. The initial MRI scan performed three months after the incident showed evidence of a partial thickness rotator cuff tear with an underlying diagnosis of degenerative tendinosis. Dr. Bush opined that the major contributing cause for appellant's right shoulder problem was her preexisting supraspinatus tendinosis. He further opined that appellant had never fit the Budapest criteria for diagnosis of CRPS and that the statements of this diagnosis in the medical records was incorrect. Dr. Bush indicated that

⁵ Counsel noted that Dr. Bush had indicated that he had only received minimal medical records and none contemporaneously with the accident and subsequent surgery. He requested that OWCP send Dr. Bush any relevant medicals from 2012 through 2014, including Dr. Ellowitz' report, operative reports, and results of objective studies.

appellant's neurological findings were normal and, thus, did not support any claimed neurological conditions due to the injury. He further noted that the January 28, 2019 medical report, which was not previously discussed, described a tremor, a new complaint, and increased frequency and severity of headaches, which was diagnosed as migraine. Dr. Bush opined that neither the issue of tremor nor the issue of headaches were in any way causally related to the March 27, 2012 employment injury.

By decision dated June 17, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 14, 2019, as she no longer had residuals or disability causally related to her accepted employment conditions. It noted that Dr. Bush found that the diagnosis of CRPS had never been established, and that appellant's migraines and tremor had not been established as causally related to the accepted March 27, 2012 employment injury. OWCP found that the weight of the medical evidence with respect to employment-related residuals and disability rested with the opinions of Dr. Bush.

On June 24, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on October 18, 2019. No additional evidence was received.

By decision dated December 31, 2019, OWCP's hearing representative affirmed the June 17, 2019 termination decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

⁶ See *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ See *S.L.*, *id.*; *T.E.*, *id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

⁸ See *S.L.*, *id.*; *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that the acceptance of her claim should be expanded to include additional conditions causally related to her accepted March 27, 2012 employment injury.

Appellant submitted several reports from Dr. Levy, wherein he diagnosed right shoulder impingement with CRPS. As Dr. Levy did not address the issue of causation with regard to these diagnoses, his reports are of no probative value in establishing causal relationship.⁹ Thus, his reports are insufficient to establish the claim.

The report from Dr. Schiuma diagnosed CRPS, Dr. Galinaitis diagnosed migraine headaches, tremor and CRPS, and Dr. Chamely diagnosed chronic pain syndrome and upper right extremity CRPS. However, these physicians also failed to address the cause of these diagnosed conditions and, thus, their reports are of no probative value regarding the issue of causal relationship.¹⁰

The Board notes that Dr. Bush reviewed the evidence of record and opined that the evidence did not support any claimed neurological condition, tremor, or headache due to the March 27, 2012 employment injury. Dr. Bush noted appellant's right shoulder crepitus and pain. He opined, however, that the mild crepitus and the reported pain did not establish objective evidence of an ongoing condition due to the injury nor did it preclude appellant from performing her date of injury job. Dr. Bush noted that appellant's physical findings demonstrated no atrophy in the right shoulder. He also indicated that there was no evidence of loss of motor strength or any sign of muscle atrophy in the right upper extremity and that the described distribution of sensory loss was nonanatomic. Thus, there was no evidence that appellant was experiencing CRPS. Dr. Bush explained that the neurological evaluation was normal and appellant's findings did not meet the criteria for CRPS. As his opinion was well rationalized, it constitutes the weight of the medical evidence. The Board thus finds that appellant has not met her burden of proof to establish that her claim should be expanded for acceptance of the additional alleged conditions.¹¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

⁹ See *V.R.*, Docket No. 19-0758 (issued March 16, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *Supra* note 9.

¹¹ *P.A.*, Docket No. 18-0559 (issued January 29, 2020).

LEGAL PRECEDENT -- ISSUE 2

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.¹² Having determined that an employee has a disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 14, 2019, as she no longer had residuals or disability causally related to her accepted March 27, 2012 employment injury.

OWCP referred appellant to Dr. Bush for a second opinion evaluation to determine the status of her accepted conditions and work capacity. In reports dated August 15 and November 7, 2018, and May 13, 2019, Dr. Bush opined that appellant's accepted work-related shoulder strain and partial tear of the rotator cuff, for which appellant had undergone surgery, had resolved as there was no objective evidence of any residual effect. He further opined that appellant was able to return to her regular duties without restrictions. In his August 15, 2018 report, Dr. Bush reviewed the SOAF and the pertinent medical evidence of record, provided his examination findings. He noted that the only objective pathologic finding was some relatively mild crepitus reproducible with active circumduction of appellant's shoulder, with no exhibited pain behaviors despite appellant's subsequently stating, when questioned, that her crepitus was painful. Dr. Bush indicated that crepitus was not unusual and was the expected postoperative subacromial bursal scarring from a rotator cuff repair. He noted that the 2014 postoperative MRI scan was insufficient to explain appellant's chronic complaints of disabling pain. Dr. Bush also indicated that there was no objective evidence of neuropathy to explain appellant's diffuse neurological symptoms in the right upper extremity. He found no evidence of loss of motor strength, no signs of muscle atrophy in the right upper extremity, and found that the described distribution of sensory loss was

¹² See *V.P.*, Docket No. 19-0645 (issued February 22, 2021); *N.P.*, Docket No. 19-0296 (issued July 25, 2019); *H.P.*, Docket No. 18-0851 (issued December 11, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹³ *J.D.*, Docket No. 18-0958 (issued January 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

¹⁴ See *D.P.*, Docket No. 18-0038 (issued January 4, 2019); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

¹⁵ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

¹⁶ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

nonanatomic. Dr. Bush further found that appellant had normal function in the right upper extremity except when in elevation above 90 degrees. However, when actively assisted, she had elevation up to 140 degrees and could hold that position without assistance. In his May 13, 2019 supplemental report, Dr. Bush reviewed a total of 55 pages of additional documentation. He indicated that the accepted mechanism of injury was a simple maneuver of abducting the shoulder with no associated resistance to approximately 120 degrees with an associated snap and that the initial MRI scan performed three months after the incident showed evidence of a partial thickness rotator cuff tear with an underlying diagnosis of degenerative tendinosis. Based on all the evidence provided and his previous reports, Dr. Bush opined that the major contributing cause for appellant's current right shoulder problem was her preexisting supraspinatus tendinosis. He advised that appellant's neurological findings were normal and, thus, did not support any claimed neurological conditions due to the injury.

Dr. Bush based his opinion on a proper factual and medical history. He provided physical examination findings and medical rationale for his opinion. Dr. Bush provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's March 27, 2012 employment injury. Accordingly, OWCP properly relied on Dr. Bush's second opinion reports in terminating her wage-loss compensation and medical benefits.¹⁷

Appellant submitted several reports from Dr. Levy, which provided findings regarding appellant's right rotator cuff and diagnosed right impingement with CRPS. However, Dr. Levy failed to opine whether appellant had any continuing employment-related residuals or disability due to the accepted conditions. As previously noted, OWCP did not accept an impingement or a CRPS diagnosis. Accordingly, Dr. Levy's reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Bush, or to create a conflict in medical opinion as to whether appellant's accepted conditions had resolved.

The reports from Dr. Schiuma, Dr. Galinaitis, and Dr. Chamely, also concerned conditions, which OWCP did not accept. These physicians did not specifically address whether appellant had residuals or disability due to the accepted right shoulder sprain and right rotator cuff tear. These reports are, therefore, also insufficient to overcome the weight of the medical evidence accorded to Dr. Bush, or to create a conflict in medical opinion as to whether the accepted conditions had resolved.¹⁸

As the weight of the evidence establishes that appellant had no further employment-related disability or need for medical treatment due to the accepted medical conditions, the Board finds that OWCP properly terminated her wage-loss compensation and medical benefits, effective June 14, 2019.

¹⁷ K.W., Docket No. 19-1224 (issued November 15, 2019); N.G., Docket No. 18-1340 (issued March 6, 2019); A.F., Docket No. 16-0393 (issued June 24, 2016).

¹⁸ *Id.*

CONCLUSION

The Board finds that appellant has not established that the acceptance of her claim should be expanded to include additional conditions causally related to her accepted March 27, 2012 employment injury. The Board further finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 14, 2019, as she no longer had residuals or disability causally related to her accepted March 27, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board